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Pre-Custody and Preventive Detention: A Study in the Light of Huidrom Konung Jao Singh's Case*

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1. The laws relating to Preventive Detention have been widely criticised on the ground that they are a serious violation of the 'right to personal liberty guaranteed by the Constitution of India'.[1] However, the State authorities are permitted to take away this right for a limited period subject to procedural safeguards, which are inherent in the said Articles 21 and 22. The Supreme Court described the "Preventive detention, as a 'jurisdiction of suspicion' and the compulsion of values of freedom of democratic society and of social order sometimes might compel a curtailment of individual's liberty".[2]
2. Personal liberty is the most precious and prized right and the power of the State to curb this right must be exercised with due case, caution and proper consideration of the facts. The foremost consideration should be "whether the acts of the detenu are in anyway prejudicial to the interest and security of the State and its citizens or seek to disturb public law and order, warranting the issue of an order of detention.[3]
3. In the case under study,[4] a question came up for consideration as to whether a person already in custody can be detained under an order issued by the competent authority under the Preventive Detention Law.[5] In Dharmendra Suganchand Chelawat's case[6] the Supreme Court laid down as follows:

    (i) An order of detention can be validly passed against a person in custody and for that purpose, it is necessary that the grounds of detention must show:
        (a) The detaining authority was aware of the fact, that the detenu is already in detention;
        (b) There were compelling reasons justifying such detention, despite the fact that the detenu is already in detention;
        (c) Compelling reasons implies:

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* *Huidrom Konung Jao Singh* Vs. *State of Manipur and others*, AIR 2012 SC, p. 2002.

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(ii) That there must be cogent material before the detaining authority on the basis of which it may be satisfied;
   (a) The detenu is likely to be released from custody in the near future; and
   (b) Taking into consideration the nature of the antecedent activities of the detenu, it is likely after his release from custody, he would indulge in prejudicial activities and it is necessary to detain him in order to prevent him from engaging in such activities.

4. In Amritlal's case,[7] in the grounds of detention, it was mentioned that there was 'likelihood of the detenu moving an application for bail' and hence, the detention was necessary. However, the Supreme Court held that 'there must be cogent materials before the authority passing the detention order that there was likelihood of his release on bail'.[8] The fact that the detenu may be released on bail cannot be determined by 'whim and fancy' (ipxi Dixit) by the detaining authority, but the subjective satisfaction must be reached on the basis of material.[9] In other words, an order based on 'whim and fancy' cannot be sustained and such an order is liable to be set aside.

5. The ratio in Huidrom Konung Jao Singh's case[10] makes it clear the following:

(i) There is no prohibition in law to pass a detention order of a person already in custody;
(ii) The determining authority has to satisfy the Court in the event of a challenge to such an order of detention;
   (a) That the authority was fully aware of the fact, that the detenu was actually in custody;
   (b) There was reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released, he would probably indulge in activities which are prejudicial to public order;
   (c) In view of the above, the authority felt it necessary to prevent him from indulging in such and activities and therefore, detention order was necessary, and
   (d) If either of these facts do not exist, the detention order will not stand. Further, when the detenu has not moved any bail application, resorting to the provisions of the Act was not permissible.[11]

6. The fact that the person is already in custody and the possibility of the person being released on bail, the apprehension of the authority that he may indulge in activities prejudicial to the interest of the society and of the State or public law or order when he is so released, makes the authorities to think of passing an order under the preventive detention law as a preventive measure. This purpose can be served by an amendment to the appropriate Preventive Detention Law in these terms.

"Not withstanding anything contained under this law or any other law for the time-being in force, no person who is in custody shall not be released on bail, when an order of Preventive Detention is in force".[12]

7. As there are strong objections to the detentions under Prevention Detention Laws, that they totally take away the personal liberty, the order is based on mere suspicion, there is no trial of a person to establish his innocence or to establish that the suspicion of the authorities has no reality and to get himself freed only in accordance with the procedure laid down. In a democratic society, there can be no justification for such a law except in emergencies. There is a need to review the Preventive Detention laws and the sanction of a judicial body must be made mandatory as a pre-condition for the authorities to pass an order of detention under the Prevention Detention laws. The existing laws may be amended to provide for such a mandatory pre-existing sanction of a judicial body necessary for passing orders under the Preventive Detention laws.

Notes and References

1. See Art. 21 and Art. 22 of the Constitution of India.
2. Ayya alias Ayub *Vs.* State of UP & another, AIR 1989 SC, p. 364.
3. Yamnan Ongli Lembi Leima *Vs.* State of Manipur & others, AIR 2012 SC, p. 321.
4. *Supra*, p. 2002.
5. Sec 3 of the National Security Act, 1980, hereinafter referred to as 'NSA'.
6. AIR 1990 SC, p. 1196, See also Rameshwar Shaw *Vs.* Dist. Magistrate, Burdwan, AIR 1964 SC, p. 334; Masood Alam *Vs.* Union of India, AIR 1973 SC, p. 897; Dulal Roy *Vs.* Dist. Magistrate, Burdwan, AIR 1975 SC, p. 1508; Alijan Mian *Vs.* Dist. Magistrate, Dhanbad, AIR 1983 SC, p. 1130; Ramesh Yadav *Vs.* Dist. Magistrate, Etah, AIR 1986 SC, p. 315; Suraj Pal Sahu *Vs.* State of Maharashtra, AIR 1986 SC, p. 2177; Binod Singh *Vs.* Dist. Magistrate, Dhanbad, AIR 1986 SC, p. 2090 and Smt. Sashi Agarwal *Vs.* State of UP, AIR 1988 SC, p 596.
7. Amritlal & others *Vs.* Union of India, AIR 2000 SC, p. 3675.
8. *Ibid.*, See also N. Meera Rani *Vs.* Govt. of Tamilnadu AIR 1989 SC, p. 2027; Kamarunnisa *Vs.* Union of India, AIR 1991 SC, p. 1640, and Union of India *Vs.* Paul Manickam, AIR 2003 SC, p. 4622.
9. A. Geeta *Vs.* State of Tamilnadu, AIR 2006 SC, p. 3053.
10. *Supra*, Para 9 (The case under study).
11. See Sec. 3 of the NS Act, 1980.
12. Sec. 3 of National Security Act, 1980 may be amended as suggested.